

REMARKS

Claims 19-33 were previously cancelled. Accordingly, Claims 1-18 are pending.

Accompanying the present Amendment is a Declaration under 37 CFR 1.132 by Pieter L. Buwalda, a Food Starch Specialist. The Declaration is not executed. An executed Declaration will follow shortly.

First Rejection under 35 U.S.C. §103(a)

Claims 1-9 and 15-18 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Martines-Serna Villagran et al. (U.S. Patent No. 6,544,580, hereinafter “the ‘580 patent”) in view of the de Vries article (“New Possibilities with Amylopectin Potato Starch,” hereinafter “de Vries”). (Office Action page 2, paragraph 3.)

The snack products of the present invention comprise potato flakes and/or granules. Flakes and/or granules are pieces of whole potatoes. The starch of these flakes and/or granules have a high amylopectin content, *i.e.*, an amylopectin content of at least 85% on a dry weight basis. (See page 4, lines 9-19, of the specification.)

In contrast, as conceded by the Examiner, the ‘580 patent teaches a snack product comprising potato flakes which do not have high amylopectin starch. (See Office Action page 2, last paragraph, last full sentence.) In order to remedy this deficiency, the Examiner cites De Vries.

However, unlike the present invention, de Vries does **not** disclose the use of flakes and/or granules of high amylopectin potatoes in the food industry. Instead, De Vries is a general overview of potential applications of starch **isolated** from high amylopectin potatoes. (Potato flakes and/or granules comprise proteins, lipids, sugars and fibers, in addition to starch.)

Thus, the combination of the '580 patent and de Vries does not teach the invention. At most, de Vries would have taught a skilled artisan to add isolated amylopectin potato starch to normal potato mash or potato snacks. (See first full paragraph on page 9 of de Vries.)

Even if a *prima facie* case of obviousness would have been presented (and the Applicants in no way believe that such a case has been presented), it would be overcome by the fact that de Vries teaches away from the present invention, as explained below.

One of the features of the present invention is that the use of potato flakes and/or granules with high amylopectin starch content provides an unexpectedly **increased expansion** in snack foods. The examples of the present application clearly demonstrate such increased expansion. In particular, see the tables on pages 16 and 19. These tables show that replacing potato flakes/granules of normal amylopectin content with potato flakes/granules of high amylopectin content provides an increase in expansion. See page 5, lines 4-9, of the specification. See also paragraph 5 of the accompanying 1.132 Declaration

On the other hand, de Vries states:

[T]he use of amylopectine potato starch leads to **less expansion** after frying. This can lead to better control of the expansion process. (1st full paragraph on p. 9. Emphasis added.)

Thus, if a skilled artisan would have wanted to produce a potato snack with greater expansion, de Vries would have led him away from using high amylopectin potato starch.

On page 7, paragraph 9, in the "Response to Arguments" section of the Office Action, the Examiner states that "[a]lthough de Vries states that there is 'less expansion after frying' ..., this does not correlate to a lack of expansion as alleged by applicant. The phrase on page 9 of de Vries simply means that there is less expansion after frying as compared to before frying."

Applicants respectfully disagree with the Examiner. One of the main themes of the de Vries article is a comparison between the characteristics of amylopectin potato starch and natural potato starch. Accordingly, de Vries clearly teaches that use of amylopectin starch yields less expansion than natural potato starch.

In his Declaration, Dr. Buwalda corroborates the Applicants' interpretation. In particular he states:

De Vries is a general overview of potential applications of isolated amylopectin potato starch. De Vries article compares the characteristics of amylopectin potato starch and natural potato starch. (Paragraph 6 of the Declaration.)

In conformity with the theme of the article, the statement "the use of amylopectine potato starch leads to *less expansion* after frying" is a statement regarding a comparison between a product made of amylopectin potato starch and a product made of natural potato starch. In particular, De Vries teaches that use of amylopectin starch in a snack product yields a *less expanded* product as compared with the use of natural potato starch. (Paragraph 7 of the Declaration.)

In fact, it does not make sense to interpret the statements of de Vries as a comparison of the degree of expansion of a product made of amylopectin starch (i) pre-frying versus (ii) post-frying. As Dr. Buwalda states in paragraph 8 of his Declaration, "Any type of starch is more

expanded post-frying versus pre-frying. Thus, [the Examiner's] interpretation would lead to a meaningless statement."

Additionally, the Examiner's interpretation also does not sense when the sentence at issue taken in direct context. For example, an explanatory sentence follows the sentence at issue. That is, an explanation is given as to why de Vries prefers less expansion. In particular, de Vries explains that less expansion after frying "can lead to better control of the expansion process."

Thus, de Vries speaks of gaining control in an "expansion process." By the Applicant's interpretation, de Vries states that, due to the lesser expansion, the expansion process is better controlled using amylopectin starch *vis-à-vis* normal starch. The Examiner's interpretation that de Vries means that there is less expansion of the product post-frying as compared to pre-frying does not make sense.

In sum, the combination of the '580 patent and de Vries does not teach the invention. At most, de Vries would have taught a skilled artisan to add isolated amylopectin potato starch to normal potato mash or potato snacks. Moreover, de Vries teaches away from the present invention, *i.e.*, de Vries teaches that use of amylopectin starch would lead to a less expanded product.

Accordingly, Applicants request withdrawal of this obviousness rejection.

Second Rejection under 35 U.S.C. §103(a)

Claims 10-14 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over the '580 patent in view of de Vries and further in view of Jeffcoat et al. (U.S. Patent No. 6,541,060,

hereinafter “the ‘060 patent”). The Examiner cites the ‘060 patent as teaching “a food product comprising less than 10% pregelatinized waxy potato starch.” (Office Action page 3, paragraph 4.)

Since the claims upon which Claims 10-14 depend are not obvious over the ‘580 patent in view of de Vries, as discussed above, the further disclosure by the ‘060 patent does not render Claims 10-14 obvious. (See paragraph 12 of Dr. Buwalda’s Declaration.) Accordingly, Applicants request withdrawal of this obviousness rejection.

Third, Fourth and Fifth Rejections under 35 U.S.C. §103(a)

The Examiner has rejected Claims 1-9 and 15-18 as being obvious over the ‘580 patent in view of Tallberg *et al.* (U.S. Patent No. 5,824,798, “the ‘798 patent”); and rejected Claims 10-14 as being obvious over the ‘580 patent in view of the ‘798 patent and further in view of the ‘060 patent. The Examiner states that the ‘798 patent teaches “a food product comprising potato starch with an amylopectin content of 100%.” (See Office Action page 4, paragraph 5.)

The ‘798 patent does not mention increased expansion of products made from the amylopectin potato starch. And, in view of the teaching of de Vries, a skilled artisan would not have been motivated to combine the ‘580 patent and the ‘798 patent if he wanted to produce a more expanded potato snack product. (See paragraphs 10 and 12 of Dr. Buwalda’s Declaration.)

The Examiner also rejected Claims 1-9 and 15-18 as being obvious over the ‘580 patent in view of Ståhl (U.S. Patent No. 5,759,597, “the ‘597 patent”); and rejected Claims 10-14 as being obvious over the ‘580 patent in view of the ‘597 patent and further in view of the ‘060

patent. The Examiner states that the '597 patent teaches "a food product comprising potato starch with an amylopectin content of at least 95%." (See Office Action page 5, paragraph 7.)

The '597 patent does not mention increased expansion of products made from the amylopectin potato starch. And, in view of the teaching of de Vries, a skilled artisan would not have been motivated to combine the '580 patent and the '597 patent if he wanted to produce a more expanded potato snack product. (See paragraph 11 of Dr. Buwalda's Declaration.)

Applicants respectfully submit that the application is now in condition for allowance, which action is earnestly solicited. If resolution of any remaining issue is required prior to allowance of this application, it is respectfully requested that the Examiner contact Applicants' undersigned attorney at the telephone number provided below.

Respectively submitted,



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